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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,577	12/22/2003	Matt Sveum	92/P03-014A	7985
34431 7590 05/29/2008 HANLEY, FLIGHT & ZIMMERMAN, LLC 150 S. WACKER DRIVE SUITE 2100 CHICAGO, IL 60606				
EXAMINER RUDAWITZ, JOSHUA I				
ART UNIT 3652		PAPER NUMBER		
MAIL DATE 05/29/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/743,577

Applicant(s)

SVEUM ET AL.

Examiner

JOSHUA I. RUDAWITZ

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-37, 46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27-37, 46 and 47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 27-37 and 46 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 27 and 47 require continuously exerting upon the vehicle brace an upward biasing force, however in depended limitations the method steps require variable magnitudes of force to be applied, the examiner is unclear how both can be achieved. Alternatively, it is unclear if the applicant rather intended the word "continuously" to mean any force being exerted no matter the magnitude, for the duration of the operation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-45 are rejected under 35 U.S.C. 102(b) as best understood as being anticipated by HAGEMAN (U.S. Patent No. 4,784,567).

- 1.1. With respect to claim 27, HAGEMAN discloses a method of operating a vehicle brace engageable adjacent to a vehicle's rear edge (Figures 1, 2) as material handling equipment traverses the edge while accessing the vehicle, the method comprising:

- 1.1(a) continuously, over the period of operation, exerting upon the vehicle brace an upward biasing force to urge the vehicle brace to a raised, stored position; and selectively causing the vehicle brace to apply a reactive upward force adjacent to the vehicle's rear edge, to dampen downward movement of the vehicle's rear edge that would otherwise result from the applied weight of the material handling equipment.
- 1.2. With respect to claims 28-37, 46 and 47, HAGEMAN discloses the method discussed above and
- 1.2(a) (Claim 28) limiting the upward force to a predetermined upper limit that is below a value at which the reactive upward force would damage the vehicle's structure.
- 1.2(b) (claim 29) allowing the brace to yield for an upward force that exceeds the predetermined upper limit.
- 1.2(c) (Claim 30) where the upward force is created by preventing movement of the brace until the upward force reaches the predetermined upper limit.
- 1.2(d) (Claim 31) where the upward force minimizes downward movement of the rear edge by being substantially equal to a downward force resulting from the equipment weight until the upward force reaches the predetermined upper limit.
- 1.2(e) (Claim 32) increasing the reactive upward force in response to an increase in a rate of descent of the vehicle's rear edge.
- 1.2(f) (Claim 33) increasing the upward force is carried out by forcing fluid through a flow restriction 19. See column 2, line 1.
- 1.2(g) (Claims 34, 35) causing the brace to exert an upward force by (Claim 34) applying frictional drag, and (Claim 35) storing energy in a spring. See Response to Arguments, below.

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- 1.2(h) (Claims 36) sensing when the vehicle is about to be loaded or unloaded. See column 3, lines 60-61.
- 1.2(i) (Claims 37) raising a vehicle restraining member to limit horizontal movement of the vehicle. See Figures 1-2.
- 1.2(j) (Claim 46) permitting the vehicle brace to be lowered to a preparatory position upon interaction with the vehicle, prior to selectively causing the vehicle brace to apply the second upward force.
- 1.3. (Claim 47) causing the vehicle brace to apply a reactive upward force adjacent the vehicle's rear edge, the reactive upward force including continuously exerting upon the vehicle brace an upward biasing force to urge the vehicle brace to a raised, stored position (see figures 1 and 2) and responsively minimizing downward movement of the vehicle's rear edge that would otherwise result from the applied weight of the material handling equipment, as the vehicle cannot move any lower that the brace allows.

Response to Arguments

4. Applicant's arguments filed 3/10/2008 have been fully considered but they are not persuasive.
5. With regards to the applicant's arguments concerning the step of "continuously exerting....an upward biasing force" the examiner first would like to note the 112 2nd rejection provided above. Second the examiner would like to note that the applicant seems to be looking at the reference in the scope of time that would not allow for the reference to read on the claims, for example, when not in use. However, fails to note that the applicants own invention fails to meet this limitation of the claim during the times that the brace is not in use. Further, while the Hageman reference indicates the

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brace is in a stored position only when in the lowered position, however the brace is still continuously stored in the loading area where the vehicle is engaging it.

6. With regards to the applicant's argument concerning the selective reactive force, the examiner notes that the selective ability of the Hageman reference can be achieved by either not contacting the vehicle to the brace or by contacting the vehicle to the brace; or alternatively, by releasing the air pressure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA I. RUDAWITZ whose telephone number is (571)272-7856. The examiner can normally be reached on Monday - Friday, 7:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. I. R./
Examiner, Art Unit 3652

/Saúl J. Rodríguez/
Supervisory Patent Examiner, Art
Unit 3652